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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 2 8 2005
EAC 03 159 51418

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a senior design engineer at [redacted] Deer Park, New York. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> [The petitioner] has extensive experience in the field of advanced physics research, specifically as it concerns reactions between electronic systems and high-energy cosmic rays, other forms of radiation in severe environments, such as high temperature, high pressure and high humidity. [The petitioner's] research has direct applications for the US semiconductor and Space industry as well as the U.S. military. . . .
>
> Leading researchers in his field, including scientists at the **Federal Government's Thomas Jefferson National Accelerator Facility** . . . as well as researchers as far away as Glasgow, Scotland and Lund, Sweden have all submitted letters of support testifying that [the petitioner] is among the elite researchers in his field.

(Emphasis in original.) With regard to counsel's reference to "researchers as far away as Glasgow, Scotland and Lund, Sweden," we must observe that Dr. [redacted] of Lunds Universitet describes himself as "a spokesperson for experiments at the Thomas Jefferson National Accelerator Facility (JLab)," and Dr. [redacted] of Glasgow University has also participated in JLab collaborations. Because the petitioner himself has worked at JLab, it is not remarkable that other JLab researchers would be familiar with his work. Furthermore, during the late 1990s, Dr. Fissum and the petitioner both worked under with Professor [redacted] at the Massachusetts Institute of Technology (MIT), Dr. [redacted] as a research associate and the petitioner as a doctoral student. Therefore, it is misleading to imply that the petitioner's overall reputation has

reached as far as Scotland and Sweden. It would be more accurate to say that the petitioner has collaborated with researchers from those places.

Eight witness letters accompany the petition. All eight of the initial witnesses have collaborated with the petitioner on projects at JLab, and much of their letters is devoted to a discussion of the petitioner's technical expertise with the equipment there, as well as software used in conjunction with that equipment. The petitioner worked on these projects while he was a doctoral student at MIT, from 1997 to 2002. Since 2002, the petitioner has worked as a senior design engineer at RSM Electron Power, Inc. The petitioner's *curriculum vitae* includes a description of his work at that company:

- Research on reactions between electronic systems and high energy cosmic rays, other forms of radiation in severe environment of high temperature, high pressure and high humidity. Create models to describe the involved nuclear-particle interactions.
- Material and package design of power semiconductor components used on military applications, space projects and other high reliability projects such as commercial jets.
- Design of special test procedures for high reliability products to ensure the high quality.
- Failure analysis, statistical modeling and precise prediction of life time of semiconductor devices in battle field, inner and outer spaces.
- Development of research programs sponsored by government research funds.

Because the petitioner no longer works at JLab or at any other facility with comparable particle accelerator apparatus,[1] discussions of his technical expertise with specific equipment and software used at JLab do not appear to be germane to the petitioner's potential *future* contributions to scientific research. Discussion of the *impact* of the petitioner's past work is relevant, however, to the extent that it serves as a rough guide to the level of accomplishment that one could reasonably expect from the petitioner in years to come.

[redacted], identified above, states that the petitioner's doctoral project "was a ground-breaking investigation of electromagnetically induced nucleon-nucleon short-range correlations from a wide range of nuclear targets." [redacted] asserts that the petitioner "successfully localized well-defined kinematical conditions such that the results of his analysis showed strong evidence of the elusive (relative) momentum-space node in the S-state proton-proton wave function. Physicists the world over have searched for this effect for decades."

[redacted] states:

> Although I have only met [the petitioner] rather infrequently when visiting JLab, I have been deeply impressed by [his] research work. [The petitioner's] primary research is on nucleon-nucleon short range correlations, which is one of the most challenging topics in modern nuclear physics. The research on this subject is of great importance because it deals with the most fundamental, yet unknown, properties of nuclear interactions. This is why I consider [the petitioner's] work demands close attention. The most difficult part of these

[1] Dr. [redacted] of JLab states: "Our collaborators come from all over the world to do experiments at our laboratory because of its unique capabilities." This suggests that technical expertise *specific to JLab equipment* has limited applications outside of JLab.

> investigations is to make clean and precise experimental measurements to guide and test the theoretical calculations which are currently available. [The petitioner] has been responsible for a ground breaking experiment to measure the electromagnetic induced two nucleon emission probabilities from various nuclei. Not only has his measurement the widest kinematical coverage in the world, but by a subtle selection of the most sensitive kinematical conditions, [the petitioner] has been able to demonstrate the importance of the node in the S-state proton-proton wave function in relative momentum space. . . .
>
> [The petitioner's] current research is focused on nuclear reactions which are found in outer space and other hostile environments. He is studying the impact of cosmic and other radiations on electronics systems, especially semiconductor materials. He is developing advanced techniques to eliminate device failures resulting from those adverse effects.

Dr. [redacted], an experimental physicist at JLab, states:

> [The petitioner] is currently working in the semiconductor industry. He is studying nuclear reactions found in outer space and other hostile environments, and how these reactions impact the functioning of the electronic systems. He is also modeling device failures connected with those impairments, and develops techniques to extend the lifetimes of the impaired systems. This is clearly an important topic that impacts several branches of industry and the military. While this work may appear different from [the petitioner's] previous experience, it does not surprise me that he can make critical contributions to this field.

Other JLab researchers offer similar assertions about how the petitioner's expertise is broadly applicable to his present work in the semiconductor industry, but the initial filing contains little discussion of what, specifically, the petitioner has achieved since leaving MIT and JLab.

The petitioner submits copies of published articles of which he is a co-author. Most of these articles were written by "the CLAS Collaboration," consisting of roughly 200 named collaborators. The collaborators are credited alphabetically, with the exception of the first few names. These first individuals, presumably, are the principal authors of the papers or the primary researchers; there is no other readily apparent reason that their names would be taken out of alphabetical order and given priority in this way. The petitioner is the first-named author on one paper with three credited authors.

The director denied the petition, stating that the petitioner had not shown that his work has had an impact substantially greater than that of most other scientists in that field. The director also noted that there is no evidence of frequent citation of the petitioner's work. On appeal, counsel states that the director failed "to take into account . . . the negative impact of [the petitioner's] current non-immigration status (in terms of research restrictions placed on non-US citizens and aliens who are not Permanent Residents)." This argument is not persuasive, because these restrictions apply to every nonimmigrant researcher. The statute and regulations do not provide for any blanket waiver for alien researchers, and the very restrictions in question indicate that the United States generally has an interest in limiting certain research activities and employment by nonimmigrants. To say that those very same restrictions argue on behalf of relaxed immigration rules is to

presume that these restrictions have no reason to exist, and are nothing more than obstacles to overcome, rather than the safeguards they are surely intended to be. Therefore, this specific assertion is not a strong claim in favor of granting the desired waiver.

Counsel states that the petitioner's "influential research articles have been cited at least 393 times by researchers around the world." It is true that heavy citation is, as a general rule, an excellent indicator of a published researcher's impact on the field. Here, however, there is an extraordinary factor that we cannot reasonably fail to take into account. Published scholarly articles often have perhaps three or five co-authors; in a group that size, one can generally presume that each credited author made substantive contributions that a knowledgeable scholar could discern in the text. As we have noted earlier, however, almost all of the petitioner's published work is in the form of articles with about 200 co-authors, and among those articles the petitioner is never one of the small number of authors singled out for primary credit. Also, there is no evidence of any citations of the one article for which the petitioner is the first of a small number of authors. Therefore, the articles and citations themselves provide no reason to conclude that these 393 citations derive from the magnitude or impact of this one particular co-author's contributions, and participation in a collaboration of this size should provide an automatic route to a waiver. The size of the collaboration certainly does not *preclude* eligibility; but alternative means of showing the petitioner's impact (rather than the impact of the entire *project*) are needed.

Perhaps being aware of this, the petitioner submits two independent witness letters on appeal. Professor [redacted] of Tel Aviv University states: "The conclusions of [the petitioner's] research provided the basis of a new experiment that I am now conducting . . . at the Jefferson Laboratory. This experiment was set up at the exact same conditions that [the petitioner] defined. The wise, broad kinematical search by [the petitioner] was essential to our ability to focus on the optimal conditions and study short-range correlations in more details [sic]."

Professor [redacted] of Pennsylvania State University states:

> I do not personally know [the petitioner] and never worked with him before. . . . So I know him through his publications, thesis, conference proceedings and my communications with other scientists in this field. [The petitioner] performed a series of experiments at Jefferson Lab and measured the cross sections of electron induced two nucleon knockout reactions from light nucleus. This work has the most complete kinematics coverage so far. . . .
>
> [The petitioner's] work on short range correlation physics and other topics in the CLAS collaboration is definitely of great value to the nuclear physics community. The experimental work helped us better understand that fundamental physics properties and improve the existing theories. I myself have cited his CLAS papers in many of my own publications.

These letters indicate that the petitioner's specific contributions, not just the CLAS collaboration in general, have attracted attention in the field. In this light, the heavy citation of the CLAS papers takes on greater weight.

Additional letters from former JLab collaborators emphasize the petitioner's "crucial" role in the projects. For instance, senior scientist [redacted] at JLab claims that the petitioner "was one of the most important contributors to these publications." The final letter is the only one from the petitioner's present employer. [redacted], president of [redacted], states:

> [The petitioner] has been leading our [redacted] effort for military and space applications. Among his many significant accomplishments since joining the firm are:
>
> 1) He developed a series of novel Silicon Carbide products. These products are far more advanced than regular silicon based products in terms of high temperature operation and minimal recovery loss. His work made our company the first one to offer this technology to military and space customers. . . .
> 2) He developed a noval [sic] technology to protect electronics systems from space radiation damages by using advanced shielding materials. This work is of major national importance because it changed the fundamental market economics for this product-specific industry. Prior to [the petitioner's] work there had only been one supplier with a single (and significantly inferior) technology on the radiation hard MOSFETs market. More importantly, this new technology reduced the cost significantly and improved the performances greatly in comparison to the previous technology.

The petitioner has, thus, provided a clearer idea of the continuing benefit to be derived from his ongoing work, rather than relying entirely upon the merits of his now-completed work at JLab. [redacted] asserts that the company "frequently receive[s] comments" from its "customers, including . . . Lockheed Martin, ITT Aviation [and] Boeing" relating to the petitioner's work; but the record contains no first-hand evidence to support this claim, so we can afford it little weight. This does not, however, detract from the weight of the evidence that the petitioner has provided.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. The petitioner appears to have overcome the director's stated grounds for denial. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.